

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 2.106 of the )  
Commission's Rules to Allocate ) ET Docket No. 95-18  
Spectrum for 2 GHz for Use )  
by the Mobile Satellite Service )  
)  
To: The Commission )

**JOINT OPPOSITION OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND  
THE NATIONAL ASSOCIATION OF BROADCASTERS TO  
PETITION FOR EXPEDITED RECONSIDERATION OF  
BT NORTH AMERICA INC. ET AL.**

The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB")<sup>1</sup> (collectively, "Broadcasters") oppose the Petition for Expedited Reconsideration (the "Petition") filed by BT North America Inc., Hughes Telecommunications and Space Company, ICO Services Limited, Telecommunicaciones de Mexico and TRW Inc. (collectively, "Petitioners") on December 23, 1998. The Commission properly denied Petitioners' Request for Mandatory Submission of Information (the "Request")<sup>2</sup>

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<sup>1</sup> MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks that serves and represents the American broadcast industry.

<sup>2</sup> Request for Mandatory Submission of Information, ET Docket No. 95-18 (July 30, 1998) ("Request"). In addition to Petitioners here, COMSAT Corporation and C.S. Communications Co. Ltd. signed the initial Request.

in its recent Order,<sup>3</sup> and the arguments advanced in the Petition do not justify reversing that decision.

The Commission denied the Request on the ground that the detailed information it sought should properly be gathered as part of the negotiation process. The Commission concluded that the more general, but still extensive, information requested in the *Third NPRM* would be sufficient to permit the Commission to formulate appropriate regulatory policy.<sup>4</sup> The Commission also found that the obligation to negotiate in good faith would ensure that Petitioners and other MSS operators receive the information they need during the negotiation process.<sup>5</sup> Petitioners object to this conclusion, arguing essentially that (1) they need the detailed information sought in the Request to estimate, before they launch service, the costs of entering the MSS market in the United States, and (2) such information cannot reliably and expeditiously be obtained in the negotiation process.<sup>6</sup> These arguments are unpersuasive, particularly in light of the information and proposals contained in the Broadcasters' initial comments in this proceeding.

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<sup>3</sup> Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, *In re Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, FCC 98-309 (released Nov. 27, 1998) ("MO&O" or "*Third NPRM*" or "*Order*").

<sup>4</sup> *Id.*, ¶ 55.

<sup>5</sup> *Id.*, ¶ 56.

<sup>6</sup> More specifically, Petitioners argue that (i) the Commission should not deny the Request when it has already acknowledged the importance to the relocation process of the type of information sought in the Request; (ii) the Commission's requests for information in the *Third NPRM* are too vague and precatory to elicit the information Petitioners need; (iii) Petitioners will be unable to initiate negotiations (because they will not know with whom to negotiate) if they lack detailed information about the existing BAS licensees and their use of the 1990-2025 MHz spectrum; and (iv) good faith negotiation requirements will not ensure that Petitioners receive the information they need in a timely manner because the mandatory negotiation period will start too late.

As the Broadcasters noted in their comments, the detailed information sought in the Request is not needed and cannot reliably be obtained prior to the initiation of the relocation negotiation process.<sup>7</sup> The NAB survey submitted with the Broadcasters' comments demonstrates the scope of the BAS relocation, from which it is possible to determine the general magnitude of the BAS relocation costs.<sup>8</sup> More than this is not required for the Commission to establish the relocation compensation scheme, since the Commission has already made clear that the size and scope of a relocation do not affect the general principle that an incumbent ousted from spectrum by a new entrant should be fairly and fully compensated for the costs of the move.<sup>9</sup>

Nor is it required that the Commission and broadcasters engage in costly information-gathering at this point to enable Petitioners to establish with certainty "the business expenses to which ICO and its U.S. service partners may be subject in entering the important U.S. [MSS] market."<sup>10</sup> Petitioners have known from the outset of this proceeding that their access to occupied spectrum would be conditioned on payment of the relocation costs of the incumbent licensees, and they nonetheless filed applications and letters of intent indicating that they intended to provide MSS service in the spectrum. The Commission has now allocated the spectrum for Petitioners' use, conditioned on their payment of relocation costs. Although those

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<sup>7</sup> Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 95-18, at 19-20 (Feb. 3, 1999).

<sup>8</sup> Although a precise calculation is not possible because it has not yet been determined what equipment changes will be needed to effect the BAS relocation to the 2025-2110 MHz band, it is possible to roughly estimate the equipment costs under the various equipment modification and replacement scenarios under consideration and from those estimates and the information in the survey to calculate a range of approximate relocation costs.

<sup>9</sup> *MO&O*, ¶ 26.

<sup>10</sup> Petition for Expedited Reconsideration of BT North America Inc. et al., ET Docket No. 95-18, at 4 (Dec. 23, 1998). It is apparent from the PCS context that the inability to predict precisely the costs of relocating incumbents should not forestall the buildout of a new service.

costs are not *precisely* knowable at this time, it is clear that they include the transaction costs associated with determining precisely what equipment will need to be modified and replaced and what the costs of modification or replacement will be. The Commission should not shift the burden of paying those transaction costs onto itself and the incumbents by granting Petitioners' Request and thereby assuming responsibility for gathering and compiling detailed information concerning BAS licensees and equipment before any negotiations have even begun.<sup>11</sup>

In addition, it would be futile to attempt at this time to develop a more precise estimate of the costs of relocation through submission of the information sought in the Request. The number of BAS licensees and the amount and type of 2 GHz equipment they own are not static. Therefore, the detailed information sought in the Request would inevitably be obsolete by the time compensation is to be paid, and the burdensome and costly census contemplated by the Request would have to be repeated at that time.<sup>12</sup>

Thus, it would be a significant waste of time and resources to require BAS licensees and frequency coordinators to submit, and the Commission to compile, the detailed information sought in the Request at this time. This is especially so because some of the information sought may not even be relevant to the calculation of relocation costs.<sup>13</sup> It would be

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<sup>11</sup> The Broadcasters note that one Petitioner continues to challenge its obligation to pay incumbent relocation costs. *See* Petition for Further Limited Reconsideration of ICO Global Communications, ET Docket No. 95-18 (Jan. 19, 1999).

<sup>12</sup> This fact does not support ICO's proposal, advanced in its comments and *ex parte* communications, that the Commission freeze applications for BAS licenses or modifications effective November 25, 1998 (or as early as January 31, 1995). *See, e.g.*, Comments of the ICO USA Service Group, ET Docket No. 95-18, at 29-30 (Feb. 3, 1999). Such a freeze would be unreasonable because it would halt *all* expansion or development of a service that has become an increasingly essential component of the local television service on which the public relies for news and sports programming.

<sup>13</sup> For example, the Request seeks submission of information on the age and depreciation schedules of BAS equipment currently deployed. Request, at 8. However, that information will  
(continued...)

more efficient and reliable, and would result in less delay, for the collective negotiating entity proposed in the Broadcasters' comments to gather the detailed information needed to calculate and distribute the precise compensation amount *after* relocation negotiations have begun.

Petitioners' concerns that they will be unable to obtain the information they need during the negotiation process are unwarranted. Petitioners contend that they will not even be able to initiate the negotiation process because they will not know with which BAS incumbents they will need to negotiate if they do not know who the BAS licensees are and what spectrum they use. As the Broadcasters explained in their comments, the MSS operators will need to negotiate with *all* BAS incumbents because almost all ENG licensees are authorized to use and share the entire 1990-2110 MHz band. Because the Broadcasters recognize that this means that a large number of BAS incumbents will be involved in the relocation negotiations, the Broadcasters have suggested that BAS incumbents negotiate collectively through a joint entity established by MSTV and NAB. If the Commission adopts this approach, there will be no need for Petitioners to identify the individual BAS licensees with which they must negotiate – the collective entity will represent all broadcast BAS licensees, except those who affirmatively opt out.

Petitioners' argument that the good faith negotiation requirement will not assure the timely collection of information because mandatory negotiations will start too late is similarly unavailing in light of the proposals in the Broadcasters' comments. The Broadcasters recognize the need to vacate expeditiously the 35 MHz of spectrum allocated for MSS, and

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(. . . continued)

not be needed if the Commission determines, as it did in the PCS proceedings and as the Broadcasters have and will continue to urge it to do here, that relocation compensation obligations will not be affected by depreciation of the equipment to be modified or replaced.

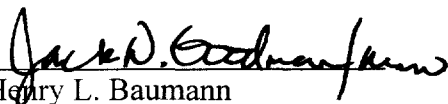
accordingly have proposed that the Commission dispense with a voluntary negotiation period and require the parties to commence mandatory negotiations within 60 days of its Order. That approach will assure the prompt commencement of negotiations subject to the good faith requirements, including the obligation to provide information necessary to the negotiations. By contrast, beginning the detailed data collection process before this proceeding is resolved would only stall the mandatory negotiation period and delay the successful completion of the relocation process.


Thus, Petitioners have provided no compelling reason for the Commission to reverse its decision not to require the submission of detailed information on BAS facilities and operations at this time. Accordingly, the Commission should affirm its Order denying Petitioners' Request for Mandatory Submission of Information.

Respectfully submitted,

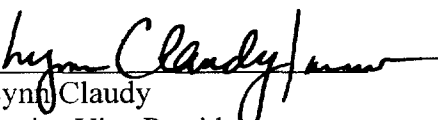
NATIONAL ASSOCIATION  
OF BROADCASTERS

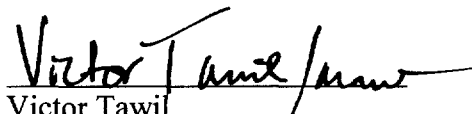
ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.

  
Henry L. Baumann  
Jack N. Goodman  
COUNSEL  
1771 N Street NW  
Washington, D.C. 20036  
(202) 429-5430 (p)  
(202) 775-3526 (f)

  
Jonathan D. Blake  
Mary Newcomer Williams  
COVINGTON & BURLING  
1201 Pennsylvania Avenue NW  
Washington, D.C. 20004  
202-662-6000 (p)  
202-662-6291 (f)

*Its Attorneys*

  
Lynn Claudy  
Senior Vice President,  
Science and Technology  
Kelly Williams  
Director of Engineering  
NATIONAL ASSOCIATION  
OF BROADCASTERS  
1771 N Street NW  
Washington, D.C. 20036  
(202) 429-5346 (p)  
(202) 775-4981 (f)

  
Victor Tawil  
Senior Vice President  
ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.  
1776 Massachusetts Avenue NW  
Washington, D.C. 20036  
202-861-0344 (p)  
202-861-0342 (f)

February 22, 1999

**CERTIFICATE OF SERVICE**

I, Mary Newcomer Williams, hereby certify that a copy of the foregoing Joint Opposition of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters to Petition for Expedited Reconsideration of BT North America Inc. et al. has been served by first class mail, postage prepaid, this 22nd day of February, 1999 on:

Cheryl Lynn Schneider  
Chief U.S. Regulatory Counsel  
BT North America Inc.  
601 Pennsylvania Avenue, N.W.  
Suite 725  
Washington, D.C. 20006

Francis D. R. Coleman  
Director Regulatory Affairs –  
North America  
ICO Global Communications  
1101 Connecticut Avenue, N.W.  
Suite 250  
Washington, D.C. 20036

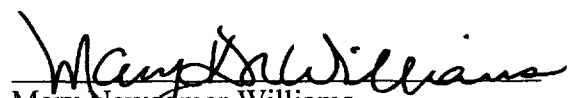
Jennifer A. Smolker  
Vice President and General Counsel  
Hughes Telecommunications and  
Space Company  
200 North Sepulveda Boulevard  
ES/001A108  
El Segundo, CA 90245

Norman P. Leventhal  
Walter P. Jacob  
Philip A. Bonomo  
Leventhal, Senter & Lerman, P.L.L.C.  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006-1809  
*Attorneys for TRW Inc.*

Joan M. Griffin  
Kelley, Drye & Warren, L.L.P.  
1200-19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036-2423  
*Attorney for BT North America Inc*

Cheryl A. Tritt  
Susan H. Crandall  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1888  
*Attorneys for ICO Services Limited*

Carlos Mier y Teran  
Director General  
Telecomunicaciones De Mexico  
Eje Central 567  
Mexico D.F.

  
Mary Newcomer Williams